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No. A-77

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

HELEN M. AMBROSE,

Petitioner,

vs.

SPERRY RAND CORPORATION, a Delaware Corporation, The International Brotherhood of Electrical Workers, AFL-CIO, and Local Union No. 2047 of the International Brotherhood of Electrical Workers,

Respondents.

BRIEF FROM RESPONDENT SPERRY RAND CORPORATION IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

POPHAM, HAIK, SCHNOBRICH, KAUFMAN & DOTY, LTD.
David S. Doty
4344 IDS Center
Minneapolis, Minnesota 55402
(612) 333-4800
Attorney for Respondents Sperry Rand Corporation

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QUESTION PRESENTED

1. Has petitioner demonstrated abuse of discretion by District Court and Circuit Court of Appeals in dismissing and refusing to vacate a settlement in a class action after the judicially approved settlement had been implemented?

Ruling below: No.

THE PARTIES

Delores Elliott	Plaintiff
Helen Ambrose	Plaintiff-Petitioner
Class of all other persons similarly situated	Plaintiffs-Respondents
Sperry Rand Corporation	Defendant-Respondent
The International Brotherhood of Electrical Workers, AFL-CIO	Defendant-Respondent
Local Union No. 2047 of the International Brotherhood of Electrical Workers	Defendant-Respondent

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Notwithstanding plaintiff's references to various constitutional provisions, statutes and rules, there are no specific constitutional provisions or statutes at issue in this appeal. The only issue presently subject to appeal is the propriety of dismissing a lawsuit after a settlement has been implemented. The underlying lawsuit originally involved allegations concerning Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000(e) et. seq., the Equal Pay Act, 29 U.S.C.

§206, and other related statutes. The case proceeded as a class action pursuant to Federal Rules of Civil Procedure, Rule 23.

STATEMENT OF THE CASE

The original action was initiated by Delores Elliott and Helen Ambrose as a class action for alleged violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000 (e) et. seq., the Equal Pay Act, 29 U.S.C. §206, and other related statutes, claiming discrimination against female employees in the predominantly female bargaining unit of Sperry Univac in the Minneapolis-St. Paul area. The action was certified as a class action on May 27, 1976. *See Sperry Rand Corporation v. Larson*, 554 F.2d 868 (8th Cir. 1977). Trial commenced on September 8, 1980.

Following several weeks of trial and several months of negotiation, the parties reached a settlement in May, 1981. The Honorable Earl R. Larson, District Court Judge, issued his order on August 11, 1981, approving the settlement. Delores Elliott and Helen Ambrose appealed the order approving the settlement agreement, but the United States Circuit Court for the Eighth Circuit affirmed the settlement on June 23, 1982. *See Elliott v. Sperry Rand Corp.*, 680 F.2d 1225 (8th Cir. 1982). The *per curiam* opinion of the Court affirmed the District Court order except insofar as it had denied attorneys' fees to the named plaintiffs. No party petitioned for certiorari review of the order of the Eighth Circuit Court of Appeals.

Following the judicial confirmation of the settlement, defendants paid out to 3,105 class members a total of $1,762,618.47. Important equitable relief has been implemented, including amendments to collective bargaining

agreements. In 1984, Sperry moved for dismissal of the lawsuit, on the basis of affidavits attesting to the compliance of defendants with all terms of the settlement agreement. After the District Court had conducted hearings on Sperry's motion to dismiss the lawsuit, Helen Ambrose filed a motion to invalidate the settlement upon various grounds.

On May 31, 1984, the Honorable Earl R. Larson issued two orders. One order dismissed the lawsuit on the grounds that the settlement terms had been implemented. A second order denied Ambrose's motion to invalidate the settlement. On September 10, 1984, the District Court entered an order denying Ambrose's motion for a new trial and invalidation of the judgment. Ambrose took an appeal to the Eighth Circuit. On March 11, 1985, the Eighth Circuit issued a *per curiam* unpublished order affirming the dismissal of the litigation. *See Ambrose v. Sperry Rand Corp.*, 760 F.2d 273 (8th Cir 1985). Ambrose moved for reconsideration by the Eighth Circuit. On May 13, 1985, the Eighth Circuit issued an order denying Ambrose's motion for reconsideration.

Ambrose has submitted a petition for a writ of certiorari to the United States Supreme Court, ostensibly raising on this appeal issues relating to the original settlement agreement. Generally speaking, however, the issues raised by Ambrose before this Court were not the issues presented in the limited proceedings in the courts below. In short, Ambrose attempts to raise issues before this Court which were not properly presented before the lower courts.

SUMMARY OF ARGUMENT

The District Court and the Circuit Court properly exercised their discretion in determining compliance with a

stipulated and judicially approved settlement. Ambrose took no appeal from the 1982 opinion of the Eighth Circuit approving the terms of the settlement. The parties relied upon the settlement and have implemented the settlement. There has been no abuse of discretion, and the courts below acted properly in determining that this litigation should be dismissed.

ARGUMENT

The case does not involve important questions of law or precedent setting issues. Rather, the petition for a writ of certiorari reflects an isolated challenge of one individual to a settlement which has proven agreeable to more than 3,000 other class members. Petitioner does not properly characterize the issues below.

I.

The District Court Properly Dismissed This Action.

Sperry properly moved the Court for an order dismissing the action with prejudice. Sperry supported this motion with evidence of compliance with the stipulated settlement, including affidavits of defense counsel and Sperry personnel showing that the terms of the agreement had been met. The District Court conducted hearings concerning the proposed dismissal. The District Court agreed that Sperry had met all of the settlement terms.

In her appeal to the Eighth Circuit, Ambrose raised two limited objections to the dismissal. Those issues were carefully considered by the District Court and reviewed again by the Eighth Circuit. Both of the issues were essentially housekeeping matters. The lower courts properly exercised

their discretion in determining that the parties had complied with the terms of the judicially approved settlement.

II.

The Lower Courts Properly Exercised Discretion In Refusing To Invalidate The Settlement.

After the District Court had conducted hearings on Sperry's motion to dismiss the appeal, Ambrose filed a motion to invalidate the settlement, claiming reliance upon various procedural rules. The trial court found no reason to disturb the prior approval of the settlement agreement. Her argument essentially amounted to an effort to obtain reconsideration of the 1981 and 1982 settlement approval.

On an appeal from an original approval of settlement, the standard of review is limited to a question of abuse of discretion. The Eighth Circuit cases on this subject are in accord with settled and standard doctrine. *See e.g., Elliott v. Sperry Rand Corp.*, 680 F.2d 1225 (8th Cir. 1982); *Reynolds v. National Football League*, 584 F.2d 280 (8th Cir. 1978); *Grunin v. International House of Pancakes*, 513 F.2d 114 (8th Cir.). *cert. denied*, 423 U.S. 864 (1975). This petition does not, however, involve the orders for settlement approval, despite petitioner's implications to the contrary.

Orders approving settlement in class action cases are final and appealable. *See Rules of Civil Procedure*, Rule 23 (e), *Research Corp. v. Asgrow Seed Co.*, 425 F.2d 1059, 1060-1061 (7th Cir. 1970). *Cf. Deposit Guaranty National Bank v. Roper*, 445 U.S. 326, *rehearing denied*, 446 U.S. 947 (1980). Petitioner objected to the settlement and had her appeal considered by the Eighth Circuit. Petitioner did not, however, seek certiorari from the 1982 order of the

Eighth Circuit. Thus, she exhausted her appeal from the order affirming settlement in 1982.

Now, in a collateral attack on the settlement orders, Ambrose would have the courts disturb the orders approving the original settlement. Her motion should be treated as a motion under Rule 60(b). The motion came too late. Ambrose's motion to invalidate the settlement came nearly a year and a half after the Eighth Circuit had issued its approval of the settlement and after all parties had irretrievably relied upon the final settlement terms. Motions to set aside a judgment must be timely and are, in any event, addressed to the discretion of the court. *See Pioneer Insurance Company v. Gelt,* 558 F.2d 1303, 1311-1312 (8th Cir. 1977) (60(b) motion must be filed within one year; "appellate court will not disturb the exercise of [trial court's] discretion in the absence of abuse"); *Chicago Northwestern Railway Company v. Union Packing Company,* 527 F.2d 592 (8th Cir. 1976) (*per curiam)* (60(b) motion denied because it was made more than one year after judgment).

Special considerations apply when a party seeks to reopen a class action judgment.

> A too liberal application of Rule 60(b) in class actions would undermine the finality of judgment entered therein and would discourage settlement of such actions.

In re Four Seasons Securities Laws Litigation, 59 F.R.D. 667, 677-678 (D. Okl. 1973), *reversed on other grounds,* 502 F.2d 834 (10th Cir. 1974), *cert. denied, Ohio v. Arthur Andersen & Co.*. 95 S.Ct. 516. Here, petitioner urges this court to reopen a judgment that has produced signifi-

cant equitable relief, including amendments to collective bargaining agreements, and that has produced significant payments to 3,105 class members. If the Court were to rule that such judgments can be reopened without extraordinary showings, beyond those offered by petitioner, the ruling would greatly discourage thoughts of settlements of class actions.

Notwithstanding that petitioner proceeds pro se, this Court should not be overly sympathetic to petitioner's failure to consider the applicable procedural rules. Her study and experience have equipped her well to manipulate the appropriate procedural aspects of the case. Also, at various stages of this litigation, petitioner has been represented by three different law firms. At every applicable point in the proceedings below, the District Court and the Eighth Circuit have extended deadlines and permitted supplemental filings by Ambrose. The Courts have shown extraordinary patience for Ambrose and have given her a full and fair hearing at every juncture. Nothing more can be served, however, from a further hearing of the issues she has raised.

III.

The Original Settlement Was Valid And Should Not Be Upset.

To the extent that this Court has interest in petitioner's allegation of conflict of interest, Sperry wishes to point out that Ambrose has never identified any allegations of conflict of interest involving her trial counsel, Richard Bland, and his firm of Meagher, Geer, Markham, Anderson, Adamson, Flaskamp & Brennan. Neither has appellant complained that her appeal attorneys, Roback and Wolf, suffered from any conflict of interest. Yet, neither the

Meagher, Geer firm nor Roback and Wolf presented any specific allegations of an improper conflict of interest on the part of any of the other participants.

Further, the conflict of interest charges raised by Ambrose have been considered by the Ethics Committee of the Hennepin County Bar Association and the Minnesota Lawyers Professional Responsibility Board. Both groups concluded that there was no conflict of interest. Judge Earl R. Larson has similarly concluded that there was no conflict of interest and no ethical violation. Finally, the Eighth Circuit specifically considered and rejected Ambrose's claims of conflict of interest.

With regard to the technical merits of the class action itself, suffice it to say that the legal and factual issues were hotly disputed. The settlement reached below was reasonable from all perspectives in view of the uncertainties involved.

It can be conceded that Elliott and Ambrose were unhappy with the settlement and with the counsel for the class in 1981 when they took their prior appeal. Obviously, Ambrose is still unhappy with the settlement and class counsel. Her isolated views are not reflective, however, of the views of the 3,105 class members who have accepted payments totalling $1,762,618.47. Ambrose has fallen far short of demonstrating reasons to justify calling upon all of the parties to unwork the settlement at this late date.

CONCLUSION

This case does not present well formed issues of important public policy. Rather, Ambrose's arguments present a confused hodgepodge of criticisms which lack support in the record. The lower courts have exercised their discretion in an appropriate manner and have given extraordinary attention to appellant's pro se claims. The petition for a writ of certiorari should be denied.

Dated: October 7, 1985.

Respectfully submitted,

POPHAM, HAIK, SCHNOBRICH,
KAUFMAN & DOTY, Ltd.
By David S. Doty
Attorney Reg. No. 23887
4344 IDS Center
Minneapolis, Minnesota 55402
(612) 333-4800
Attorneys for Respondent
Sperry Rand Corporation